

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 1628 of 2001

Old F.A.F.O.No.413 of 1987

State of U.P. through the Collector,
Tehri Garhwal.

... **Appellants.**

Versus

1. Smt. Baisakhi Devi, W/O late Kunwar Singh
R/O village Bhaldiyans, Patti Chandra Badni
District Tehri Garhwal,
2. Uttar Pradesh State Transport Corporation Dehradun.
3. Mahavir Singh S/O Tej Singh Driver, Truck No. UTC-9889
P.W.D. Pauri Garhwal.

... **Respondents**

Sri Nand Prasad, learned Standing Counsel for the appellants-State.
Sri A.N.Sharma, learned counsel for the respondent no.2.

Date June 05, 2006.

(Hon'ble B.S. Verma, J.)

This appeal under Section 110-D of the Motor Vehicles Act, 1939 (***for short the Act***) has been preferred against the judgment and award dated 17-11-1986 passed by the Motor Accident Claims Tribunal Tehri Garhwal (***in short the Tribunal***) in M.A.C. Petition No. 17 of 1984, Smt. Baisakhi Devi Vs. U.P.S.R.T.C. and others whereby the learned Tribunal awarded compensation of Rs. 42,278/- in favour of the claimants recoverable from the Opposite parties No. 1 and 2, U.P.S.R.T.C. and State of U.P. in equal shares. Aggrieved, the State of U.P. has come up in appeal.

At the outset, it may be mentioned that in the motor accident, which occurred on 8-9-1983 involving two vehicles Bus No. UTF-3705 belonging to the U.P.S.R.T.C. and Truck No. UTC-9889, besides the deceased Kunwar Singh, husband of the claimant, some other persons sustained grievous injuries and died. Consequently separate claim petitions were preferred by the claimants in respect of this motor accident. It may be added that this Court vide judgment dated 22-04-2006, passed in A.O. No. 903 of

2001, The State of U.P. Vs. Smt. Guddi Devi and others, arising out of M.A.C. Petition No. 20 of 2004, out of the same motor vehicle accident has already considered the points involved in the present appeal and ultimately, the appeal preferred by the appellant was dismissed on merits.

Relevant facts giving rise to this appeal are that Kunwar Singh, aged 36 years and earning Rs. 500/- per month as salary from hotel as head cook lost his life in a motor vehicle accident besides Dhoom Singh husband of one Guddi Devi and some others who sustained fatal injuries, which occurred on 8.9.1983 at 1 p.m. between Gooler and Shivpuri on Rishikesh Road within P.S. Muni-ki-Reti who was travelling in bus No. UTF 3705 belonging to UPSRTC, which was being driven rashly and negligently at a high speed. At the place of accident, Truck No. UTC-9889 belonging to the appellant was also coming and there was sufficient place for two vehicles to cross each. Due to the negligence of the driver of the bus, the bus fell on the bank of river Ganga. Both the driver of two vehicles were negligent in driving; hence the compensation of Rs. 2,27,000/- has been claimed by the widow of the deceased.

The opposite parties contested the claim petition by filing their written statements. The O.P. Nos. 2 and 3 the owner and driver of the truck have admitted the death of the deceased and petitioner Baisakhi Devi was paid sum of Rs. 15,122.87 by the State Government. They asserted that on the ill-fated day, the bus was coming from Deoprayag to Rishikesh while the truck in question was coming from Rishikesh to Deoprayag. At the spot the road was narrow. The truck was ascending while the bus was coming downwards. When the two vehicles came face to face, the truck driver applied brakes and stopped the truck. However, the rear body of the bus collided with the truck due to which the driver of bus lost control and due to the accident, several passengers of the bus died on the spot. There was no negligence on the part of the driver of the truck.

The U.P.S.R.T.C. filed separate written statement and asserted that the truck driver was negligent; therefore, the Corporation is not liable to pay compensation.

On the pleadings of the parties, the learned Tribunal framed necessary issues in the case. After recording evidence of the parties and perusing the evidence, the learned Tribunal came to the conclusion that the accident resulting in the death of Kunwar Singh was caused due to rash and negligent acts on the part of the driver of the two vehicles involved in the accident and accordingly, the U.P.S.R.T.C. and State were fastened liability to pay compensation. After dealing with the evidence on the point of quantum of compensation, the learned Tribunal ultimately awarded compensation of Rs. 42,278/- to the claimant after adjusting the amount of Rs. 15,122/- paid by the State to the claimant as is evident from the impugned judgment.

The impugned judgment and award has been assailed mainly on the ground that the truck in question belonged to Public Works Department Pauri Garhwal, but the same was not arrayed as party to the proceedings. The findings of the tribunal on the point of negligence has also been challenged and it was contended that the finding of the Tribunal is not based on evidence.

I have heard learned counsel for the appellant as well as U.P.S.R.T.C. and have perused the entire material on record.

In the course of arguments, learned Standing Counsel for the State-appellant Sri Nand Prasad fairly conceded that this Court while deciding A.O. No. 903 of 2001, State of U.P. Vs. Smt. Guddi Devi and others has already considered the points involved in the present appeal. He has also submitted that no other new issue is left to be considered by this Court in the present appeal. I have gone through the judgment dated 22-4-2006 passed by this Court in A.O.

No. 903 of 2001. I am of the view that in the present appeal no other new point is involved for consideration, therefore, since the present appeal is squarely covered by the earlier judgment dated 22-4-2006, passed in A.O. No. 903 of 2001, which was dismissed on merit, this appeal may be dismissed in terms of the said judgment.

In view of the order dated 22-4-2006 passed by this Court in A.O. No. 903 of 2001, State of U.P. Vs. Smt. Guddi Devi and others, this appeal preferred by the State is dismissed on merit in terms of said judgment. No order as to costs.

The amount in deposit with this Court, if any, be transmitted to the Motor Accident Claims Tribunal concerned for being paid to the claimant.

(B.S. Verma, J.)

RCP